

# **ENVIROCARE of UTAH, INC.**



## **LAND OWNERSHIP EXEMPTION PETITION**

**December 1, 2000**

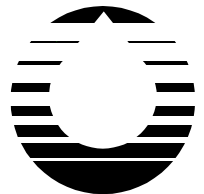


***ENVIROCARE of UTAH, INC.***

***THE SAFE ALTERNATIVE***

# LAND OWNERSHIP REQUIREMENT

- “Disposal of waste received from other persons may be permitted only on land owned in fee by the Federal or a State government.” UAC R313-25-28(1)



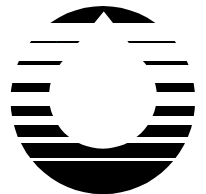
# PURPOSE OF OWNERSHIP REQUIREMENT

- Purpose is to provide assurance that institutional control of site will continue for longer periods than through private ownership
- Requirement is to have institutional control over site after closure for 100 years



# EXEMPTION

- “The Board may, upon application or upon its own initiative, grant exemptions or exceptions from the requirements of these rules as it determines are authorized by law and will not result in undue hazard to public health and safety or the environment.” UAC R313-12-55(1)



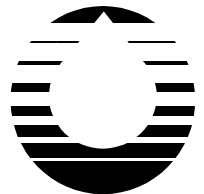
# ELEMENTS OF EXEMPTION

- Authorized by law (i.e., the exemption does not violate a statutory or other legal requirement)
- No undue hazard to public health or the environment (i.e., it provides equivalent protection)
- No public comment period required



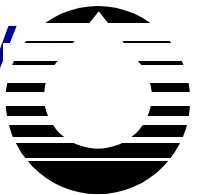
# EXISTING EXEMPTION

- NORM and NARM (11/18/1987)
- Class A LLRW (3/8/91)



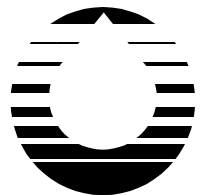
# NRC DECISION

- In the Matter of the State of Utah,  
(1/26/95)
- Denied petition to revoke agreement state status for failure to require government ownership of Clive Site
- Held that “the State of Utah will have the power to control the ownership, use and maintenance of the Envirocare property after closure of the facility to a degree equivalent to ownership of the site.”



# **NRC DECISION (cont'd)**

- NRC found that exemption ensures equivalent protection to public health and the environment because:
  - Envirocare responsible for activities at site
  - Trust Agreement for closure, post-closure, and active institutional control periods





# NRC DECISION (cont'd)

- License restricts undisposed waste at Site to amount that can be disposed of through trust funds
- State does not need ownership to supervise Site
- Restrictive covenant for passive institutional control period



# RESTRICTIVE COVENANT

- Executed by Envirocare and DEQ  
6/29/1993
- Recorded in Tooele County 6/30/1993
- Conditions:
  - No excavation or construction after closure except as necessary to maintain premises
  - No use which would impair integrity of property



# **RESTRICTIVE COVENANT (cont'd)**

---

- No change in use without prior DEQ consent
- Erection and continuous maintenance of warning monuments and markers at Site
- No conveyance of Site without prior DEQ consent
- Any state or federal agency can enforce Restrictive Covenant in state court



# **RESTRICTIVE COVENANT (cont'd)**

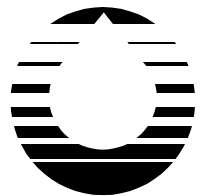


- NRC found that the restrictive covenant is similar to government ownership because there is an entity to take action regarding control of land and government can enforce restrictive covenant



# FEDERAL REACTION TO OWNERSHIP TRANSFER

- DOE authorized, but not required, to take ownership (42 U.S.C. § 1017(b))
- DOE Letter to Envirocare (October 31, 2000)
  - Need NRC determination that all Site closure requirements met
  - Transfer without cost to Federal government



# FEDERAL REACTION (cont'd)

- First find that Federal ownership “necessary or desirable in order to protect public health and the environment”
- DOE has initiated assessment of issues surrounding transfer of LLRW sites



# STATE REACTION

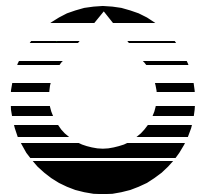
- No interest in taking ownership of Site until operations cease
- Require legislative action to authorize taking of ownership



# EXISTING GOVERNMENT OWNERSHIP AT SITE



- DOE currently owns land under Vitro Tailings
- DOE will take ownership of land under 11e.(2) waste cells upon closure





# B & C WASTES

- B & C wastes required to be stabilized for 300 years or be placed in high integrity containers and for C waste to be buried at least 5 meters or have engineered barriers (This requirement is based on institutional controls being gone after 100 years)
- NRC Regulations on allow credit for a 100-year post-closure institutional control period the same as for other LLRW



# **BASIS FOR EXEMPTION**



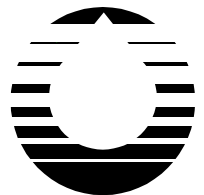
- The exemption will provide equivalent protection to public health and the environment
- Already have exemptions for NORM, NARM, and A Wastes
- Restrictive Covenant covers B & C Wastes
- DOE ownership of Vitro tailings and future ownership of 11e.(2) cells - Federal government already at Site



# **BASIS FOR EXEMPTION (cont'd)**



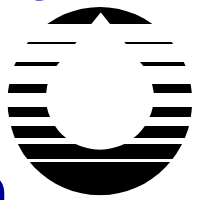
- Exemption is authorized by law (NRC decision)
- No undue hazard to public health or the environment
- DOE and State will not consider taking ownership until after closure of Site in any event



# **NO IMPACT ON REGULATION OF SITE**



- Envirocare still subject to license conditions and rules governing waste disposal
- DRC's enforcement and regulatory authority unaffected
- Envirocare or successor still responsible for closure, post-closure, and institutional control
- Trust fund in place to assure protection



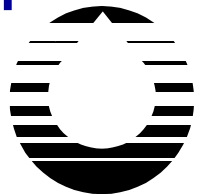
# ADDITIONAL MEASURES

- Envirocare has agreed to additional measures which provide protection over and above that provided by the conditions for the exemption, including:
  - Supporting legislative initiatives
  - Enhancing trust fund - For Post 100 Years



# LEGISLATIVE PROPOSALS

- Establish radioactive waste surveillance and maintenance fund for period beyond institutional control period (first 100 years following closure)
- Establish interest-bearing account to receive fees on disposal of B & C waste to be used for post-institutional control of Site



# LEGISLATIVE PROPOSALS

## (cont'd)

---

- Authorize transfer of Site ownership to state or federal government at end of institutional control period

